

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|-------------------------------------|---------------------------|--|------------------------------------|---------------------------------|
| Investigator: Conor O'Shea | Team: Squad #05 | CCRB Case #: 201905389 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 06/18/2019 5:00 AM | Location of Incident: § 87(2)(b) | 18 Mo. SOL 8/4/2021 | Precinct: 107 | | |
| Date/Time CV Reported Thu, 06/20/2019 10:29 AM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Thu, 06/20/2019 10:29 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) |

| Subject Officer(s) | Shield | TaxID | Command |
|------------------------|--------|--------|---------|
| 1. DT3 Michael Leclair | 5045 | 943471 | WARRSEC |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. DT3 Munir Alhidami | 1315 | 940953 | WARRSEC |
| 2. DT2 Kevin Brady | 00646 | 915340 | WARRSEC |
| 3. DT3 Felix Garcia | 04045 | 906303 | WARRSEC |
| 4. DT3 David Mischo | 517 | 937115 | WARRSEC |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.DT3 Michael Leclair | Abuse: Detective Michael Leclair threatened to damage § 87(2)(b) property. | § 87(2)(b) |
| B.DT3 Michael Leclair | Abuse: Detective Michael Leclair threatened to notify the Administration for Children's Services. | § 87(2)(b) |
| C.DT3 Michael Leclair | Abuse: Detective Michael Leclair entered § 87(2)(b) in Queens. | § 87(2)(b) |
| D.DT3 Michael Leclair | Abuse: Detective Michael Leclair searched § 87(2)(b) in Queens. | § 87(2)(b) |
| E.DT3 Michael Leclair | Abuse: Detective Michael Leclair failed to provide § 87(2)(b) with a business card. | § 87(2)(b) |

Case Summary

On June 20, 2019, § 87(2)(b) filed this complaint by phone with the CCRB.

On June 18, 2019, at approximately 5 a.m., Detectives Michael Leclair, Munir Alhidami, David Mischo, Felix Garcia, and Kevin Brady § 87(2)(g) all from the Manhattan Warrants Section's Violent Felony Squad—went to § 87(2)(b) residence, located at § 87(2)(b) § 87(2)(b) in Queens. Det. Leclair was investigating a suspect in a shooting named § 87(2)(b) who is the father of one of § 87(2)(b) children and who Det. Leclair believed § 87(2)(b) was dating. Det. Leclair threatened to break the door down if § 87(2)(b) did not open it (**Allegation A: Abuse of Authority**, § 87(2)(g)). Det. Leclair threatened to call the Administration for Children's Services (ACS) if there were any children inside the apartment (**Allegation B: Abuse of Authority**, § 87(2)(g)). Det. Leclair and his team entered and searched the apartment (**Allegations C–D: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was not present, so they left without making any arrests or issuing any summonses. Det. Leclair failed to provide § 87(2)(b) with a business card (**Allegation E: Abuse of Authority**, § 87(2)(g)).

The investigation did not obtain any video evidence. The Warrants Section was not participating in the BWC program as of the incident date.

§ 87(2)(b) initially withdrew this complaint on July 24, 2019, but requested that the CCRB reopen it on September 11, 2019. At the same time, § 87(2)(b) filed a related complaint under case § 87(2)(b), involving Det. Leclair returning to her residence on that date in September as part of his ongoing investigation into § 87(2)(b). This initial withdrawal and subsequent reopening delayed the investigation. Further delaying the investigation were the COVID-19 global pandemic, issues with and delays in scheduling remote officer interviews, and the NYPD's extended refusal to provide crucial documents to the CCRB.

Allegation (C) Abuse of Authority: Detective Michael Leclair entered § 87(2)(b) § 87(2)(b) in Queens.

Allegation (D) Abuse of Authority: Detective Michael Leclair searched § 87(2)(b) § 87(2)(b) in Queens.

It is undisputed that, before entering the apartment, Det. Leclair spoke to § 87(2)(b) at the door for some time. She ultimately opened the door at least partially. The officers entered the apartment, searched throughout it, and determined that § 87(2)(b) was not there. No arrest or summons resulted. There is no consent-to-search form regarding this incident (**Board Review 01**). The exact circumstances under which the officers entered § 87(2)(b) apartment, and what they said to § 87(2)(b) before doing so, remain in dispute.

It is also undisputed that § 87(2)(b) and § 87(2)(b) son, who shares § 87(2)(b) surname, lived at the residence with § 87(2)(b).

Det. Leclair had been investigating § 87(2)(b) because he was wanted in a non-fatal shooting in Manhattan from a few weeks prior. The only active warrant for § 87(2)(b) was a five-year-old bench warrant issued when § 87(2)(b) failed to answer a summons (**Board Review 02**). There was also a probable cause I-Card (**Board Review 03**, page 2 of the PDF) for § 87(2)(b) regarding the shooting, which was Det. Leclair's main focus. Both the bench warrant and I-Card list the same residence for § 87(2)(b) a Staten Island address that is different than § 87(2)(b) residence.

Det. Leclair testified (**Board Review 04**) that his pre-entry investigation led him to believe that § 87(2)(b) was in a romantic relationship with § 87(2)(b) with whom § 87(2)(b) shared a child, and that he likely lived at her residence. Det. Leclair did not remember the information underpinning his belief that § 87(2)(b) and § 87(2)(b) were in a romantic relationship without being able to consult his full DD5 case file for this case—documents which the NYPD

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had refused to provide to the CCRB while the investigation into § 87(2)(b) was still open. Det. Leclair's investigation primarily consisted of database searches, which revealed possible address hits for § 87(2)(b) both within NYC (including § 87(2)(b) residence) and outside of NYC. Det. Leclair ultimately determined that § 87(2)(b) address was "the most probable address that § 87(2)(b) would be living at." He based this assessment at least on the romantic relationship with § 87(2)(b) the multiple database hits—including a NY State DMV search—as well as the fact that § 87(2)(b) had provided § 87(2)(b) address on a late-January 2019 traffic summons he received.

Det. Leclair's case file of DD5s (**Board Review 05**) are largely consistent with Det. Leclair's testimony as described above with the following additions and specifications. They show that about two weeks before this incident, Det. Leclair conducted several database searches for § 87(2)(b). A search of the CJA folders database revealed a 2014 folder identifying § 87(2)(b) as § 87(2)(b) "common law child's mother." At least two searches—a New York State DMV inquiry and a Human Resource/Benefits inquiry—revealed an address for § 87(2)(b) of § 87(2)(b) § 87(2)(b) in Queens, the address in question in this incident. The investigation was able to verify the DMV search results (**Board Review 06**). A shelter check revealed that § 87(2)(b) was not in the shelter system.

These initial database searches also revealed one commercial property in Raleigh, North Carolina related to § 87(2)(b). In the week leading up to this incident, Det. Leclair twice spoke with a sergeant in the Raleigh Police Department's Fugitive Division/Fugitive Apprehension Team. Det. Leclair first requested the sergeant's assistance and sent § 87(2)(b) "wanted" poster. The next day, the sergeant advised Det. Leclair that he conducted surveillance at the Raleigh-based commercial address in question, which was also associated with § 87(2)(b) sister, but did not see § 87(2)(b) there. The Raleigh sergeant also provided license plates for vehicles at the location. Det. Leclair determined that these plate numbers did not have any recent license plate reader (LPR) hits.

§ 87(2)(b) provided consistent testimony in her intake call, telephone statement, and CCRB interview (**Board Review 07–09**). She recounted that officers announced that they were the police and knocked on, kicked, and rattled her front door for an extended period of time. She initially did not open it because she was scared. After some time, Det. Leclair yelled that the officers had been outside for 20 minutes, but no one had opened the door yet. Det. Leclair also said, "We're about to kick the door down" (addressed separately below in **Allegation A**), "If there's [sic] kids in there, they're going to get taken away; they're going to ACS" (addressed separately below as **Allegation B** separately below), and to move any children and pets away from the door. Fearing that the officers would kick down her door, § 87(2)(b) opened it about halfway—at an approximately 45° angle—while she stood by the door. The officers rushed directly inside § 87(2)(b) apartment without any conversation about whether they could do so or whether § 87(2)(b) gave them permission to enter. § 87(2)(b) did not want the officers in her home, did not consent to their entry at all, and told them so in the moment.

Det. Leclair was not interviewed until approximately seven months after the incident (**Board Review 04**). He initially testified that § 87(2)(b) "let us into the apartment," but later clarified that he did not remember how far she opened the door before the officers went in. Det. Leclair typically asks civilians for permission to enter their apartment. When asked how § 87(2)(b) responded to that question, Det. Leclair said, "I believe she was okay with it." Det. Leclair was unable to remember anything § 87(2)(b) specifically said or did to make him think she was consenting to the entry.

Det. Alhidami (**Board Review 10**) was one of the officers who went with Det. Leclair to the apartment doorway itself. Det. Alhidami could not recall the conversation at the doorway and did not remember the "exact moment" of how or when the officers actually entered, but he believed that Det. Leclair and § 87(2)(b) spoke for some time before she allowed the officers to enter. Det. Alhidami denied that the officers forced their way into the apartment. Det. Alhidami

believed that § 87(2)(b) gestured so as to invite the officers inside, but he could not describe the gesture. It should be noted that Det. Alhidami was not interviewed until nearly two years after the incident.

Det. Mischo (**Board Review 11**) testified that Det. Leclair believed § 87(2)(b) was living in this apartment and would likely be sleeping there when they arrived, given the early hour of the morning. Det. Mischo did not remember any specifics about whether or how the VFS team obtained consent to enter the apartment, how they got inside, or any specifics about any conversations (or even whether such conversations occurred) about whether officers could come inside the apartment. Det. Mischo was certain that they did not force the door open or break it down.

Det. Garcia (**Board Review 12**) was not in a position to have witnessed this portion of the incident. Multiple members of the VFS team who either definitively were present (Det. Brady) or were possibly present (the VFS supervisor, Sergeant Michael Powers) retired from the NYPD before the investigation could interview them (**Board Review 13**).

Although Det. Leclair and Det. Alhidami testified that § 87(2)(b) let the officers inside, they also testified that they did not believe any such consent was necessary. They believed they had sufficient legal authority—indeed, “absolute legal authority,” in Det. Leclair’s words—to enter the apartment based on the bench warrant. The warrant made Det. Leclair think that § 87(2)(b) consent “wouldn’t have made a difference either way,” given his belief that § 87(2)(b) resided in that apartment and was likely present at the time.

Ultimately, it was not necessary for the investigation to determine whether § 87(2)(b) consented to the officers entering the apartment, as the investigation found that the officers did not require consent to enter.

“[F]or Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.” Payton v. New York, 445 U.S. 573 (1980) (**Board Review 14**). In New York State, a bench warrant “must be executed in the same manner” as an arrest warrant. NY Criminal Procedure Law, § 530.70 (**Board Review 15**). Generally, officers may reasonably presume that a suspect is at his residence based on the early hour of the morning. United States v. Terry, 702 F.2d 299 (2d Cir. 1983) (noting that it was reasonable for officers to presume that a suspect would be at his residence at 8:45 a.m. on a Sunday morning) (**Board Review 16**).

§ 87(2)(g)

§ 87(2)(g)

Allegation (A) Abuse of Authority: Detective Michael Leclair threatened to damage § 87(2)(b) property.

It is undisputed that § 87(2)(b) waited at least several minutes to open the door even after the officers knocked and announced their presence and authority. It is further undisputed that Det. Leclair was the primary contact officer with § 87(2)(b) during this incident, which is consistent with the VFS team’s practice that the case officer takes the lead in these situations.

§ 87(2)(b) recounted that Det. Leclair threatened to kick the door down if she did not open it.

Det. Leclair (**Board Review 04**) testified that he did not remember whether he threatened to kick the door down if § 87(2)(b) did not open it, but notably he did not deny making this statement. Det. Leclair *did* deny hearing any *other* officer threaten to kick the door down if § 87(2)(b) did not open it.

Det. Alhidami (**Board Review 10**) testified that he was “pretty sure” Det. Leclair was saying something while knocking on the front door of the apartment, but he did not remember what was being said specifically. Det. Alhidami did not remember whether Det. Leclair or any other officer said they would kick the door down. Det. Alhidami did not deny that any officer made such a statement, though. Det. Mischo (**Board Review 11**) denied that any officer threatened to kick the door down.

“If the officer is authorized to enter premises without giving notice of his authority and purpose, or if after giving such notice he is not admitted, he may enter such premises, and by a breaking if necessary.” NY Criminal Procedure Law § 120.80(5) (**Board Review 17**).

§ 87(2)(g)

It is undisputed that Det. Leclair knocked and announced his authority and purpose, and that § 87(2)(b) waited at least several minutes before opening the door. § 87(2)(g)

Allegation (B) Abuse of Authority: Detective Michael Leclair threatened to notify the Administration for Children’s Services.

At the time of the incident, § 87(2)(b) two sons lived in her apartment. They were home and asleep when the officers arrived. § 87(2)(b) testified that, before she opened the door, Det. Leclair shouted that if there were children inside, they were going to be taken to ACS. Ultimately, none of the officers actually called or notified ACS during the incident.

When Det. Leclair (**Board Review 04**) was asked if he or any other officer made statements about what would happen to any children inside the apartment, he explained that his team will frequently ask if there are children inside for the children’s safety. The presence of children would change Det. Leclair’s calculus for how to gain entry to an apartment because as a member of the Violent Felony Squad, he often investigates suspects who are armed with weapons. With regard to this specific incident, however, Det. Leclair testified that he did not know if any children were present in § 87(2)(b) apartment. Det. Leclair did not remember whether he said any children inside the apartment would go to ACS, and he did not remember whether he mentioned ACS in any context. Det. Leclair did not deny, however, that he ever mentioned ACS or that he said in substance that any children in the residence would go to ACS. Det. Leclair did explicitly deny hearing any *other* officer mention ACS.

Det. Leclair’s understanding of ACS’s function and powers was that the mere execution of an arrest or bench warrant like this would not trigger ACS involvement—unless a suspect actually endangered a child by, for example, barricading himself in a room using the child’s occupied crib. Det. Leclair articulated no reason to believe that there was any child abuse, neglect, or maltreatment involving § 87(2)(b) § 87(2)(b) or any children living with them.

Det. Alhidami (**Board Review 10**) did not remember whether Det. Leclair or any other officer said that any children in the apartment would go to ACS, or whether ACS was mentioned at any point in any capacity or context. Det. Alhidami did not deny that any officer made those statements. Det. Mischo (**Board Review 11**) did not remember whether there was any conversation prior to the entry. He denied that any officer ever said that any children inside the apartment would be going to ACS. Det. Mischo did not remember anything about this incident that would have prompted any ACS-related concerns.

The investigation credited § 87(2)(b) testimony that Det. Leclair threatened to notify ACS when he was attempting to convince her to open her door. § 87(2)(b) consistently testified to hearing this threat in three separate statements: two days after the incident in both her intake call and her telephone statement, and a few months later in her CCRB interview. Moreover, although Det. Leclair denied hearing any *other* officer mention ACS or threaten to call ACS, he conspicuously did *not* deny mentioning ACS or threatening to call ACS himself. Instead, he merely said he did not remember whether he did so. Det. Leclair remembered a notable level of detail in other parts of this incident, and remembered enough of what *other* officers said to explicitly deny that they made such a statement, but he could not make such a denial on his own behalf. Comparing § 87(2)(b) specific, consistent allegation to Det. Leclair's conspicuous non-denial, the investigation concluded that a preponderance of the evidence existed to support § 87(2)(b) testimony.

Patrol Guide Procedure 215-03 (**Board Review 18**) states that, in order for an officer to submit a report of suspected child abuse or maltreatment, he must have "reasonable suspicion of abuse/neglect/maltreatment." If there is no imminent danger to the life or health of the child, the officer cannot remove the child from his residence and/or from the person who is legally responsible for the child's care. Even when an officer has reasonable cause to believe that a child's continued presence in his home presents an imminent danger to the child's life or health, the officer still cannot personally remove the child from the residence absent consent from the child's guardian. Absent consent, the officer can only notify the patrol supervisor, who then has the power to direct a forcible removal of the child if there is not sufficient time to apply for a court order.

Det. Leclair did not claim to have had any suspicion that any children in § 87(2)(b) apartment had been abused, neglected, or maltreated. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (E) Abuse of Authority: Detective Michael Leclair failed to provide § 87(2)(b) with a business card.

It is undisputed that Det. Leclair entered and searched § 87(2)(b) apartment, that no arrests or summonses resulted, and that Det. Leclair and § 87(2)(b) spoke after the search concluded. § 87(2)(b) provided her name and telephone number to Det. Leclair at his request. It is disputed whether Det. Leclair provided his identifying information or a business card to § 87(2)(b).

§ 87(2)(b) (**Board Review 09**) testified that Det. Leclair did not provide her with a business card during this incident, and that she did not request one. When § 87(2)(b) first filed her CCRB complaint about this incident in June 2019, she did not report Det. Leclair's name or any other identifying information for him. § 87(2)(b) testified that she did not learn Det. Leclair's name until the incident on September 11, 2019, when he called her from her apartment building while she was not home and asked her to meet with him to discuss his investigation. That same day, § 87(2)(b) reported Det. Leclair's name, shield number, and command to the CCRB for the first time when she filed a new complaint about the September incident (**Board Review 19**).

Det. Leclair (**Board Review 04**) testified that during the post-search conversation, he "gave her [his] information" verbally, including his name and telephone number. Det. Leclair had been issued business cards prior to the incident date, but he did not remember giving a card to § 87(2)(b) and did not remember if he had any such cards on his person during the incident.

Det. Alhidami and Det. Mischo (**Board Review 10–11**) testified that they did not see Det. Leclair provide § 87(2)(b) with a business card. Det. Alhidami noted that it was possible that Det. Leclair provided one to § 87(2)(b) while Det. Alhidami was not looking.

Det. Leclair's DD5 entry for this incident (**Board Review 20**, "the June DD5") only notes that he visited the apartment in question, that § 87(2)(b) was not present, that he spoke to § 87(2)(b) and that § 87(2)(b) did not provide any information about where § 87(2)(b) might be staying. There is no mention in the June DD5 about Det. Leclair providing his information to § 87(2)(b). By contrast, in Det. Leclair's DD5 entry from September 11, 2019—the day he returned to § 87(2)(b) apartment and called her as described above—Det. Leclair specifically wrote, "...provided my information and requested that § 87(2)(b) contact me so that I can further explain the circumstances regarding my visit" (**Board Review 21**, "the September DD5").

§ 87(2)(g)

Det. Leclair admitted that he did not recall giving her a card, and Det. Mischo and Det. Alhidami both testified that they did not see Det. Leclair provide a business card. Det. Leclair did testify that he provided his information verbally. However, the investigation found it significant that his DD5 documenting the June incident made no mention of providing such information to § 87(2)(b) while his DD5 for the September incident specifically noted that he provided his information to her during that incident. Furthermore, § 87(2)(b) was unable to identify Det. Leclair by name, shield number, or command when she filed her first CCRB complaint shortly after the June incident. This tends to indicate that she did not have the information, as it is illogical that she would have withheld such pertinent evidence. She then immediately provided that information to the CCRB when she filed a new complaint shortly after the September incident, which further demonstrates that the September incident was the first time that Det. Leclair provided that information to her.

Upon completion of a home search that does not result in a summons or arrest, officers must provide the subject of that search with a business card, even if the person does not request one. The only exceptions are: if the officer is engaged in approved undercover operations or activities; if there are exigent circumstances requiring immediate action; if the search is predicated upon entrance to a public building; or if the officer is verifying the identity of a person seeking entry to an area with restricted access due to public health, public safety, or security concerns (e.g. terrorist attack or natural disaster). NYC Administrative Code 14-174 (**Board Review 22**).

Det. Leclair was required to give § 87(2)(b) a business card, or otherwise provide her with the relevant identifying information, because he entered and searched her apartment. § 87(2)(g)

(g)

Civilian and Officer CCRB History

- § 87(2)(b)
- Det. Leclair has been a member of service for 14 years and has been named a subject in three other CCRB complaints and 12 other allegations, none of which was substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of May 19, 2021, the NYC Office of the Comptroller has no record of any Notice of Claim regarding this incident (**Board Review 24**).

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- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Squad No.: #05

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| Investigator: | <u>Conor Seamus O'Shea</u> Signature | <u>Investigator Conor S. O'Shea</u> Print Title & Name | <u>June 9, 2021</u> Date |
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| Squad Leader: | <u>Daniel Giansante</u> Signature | <u>IM Daniel Giansante</u> Print Title & Name | <u>June 9, 2021</u> Date |
|---------------|--------------------------------------|--|-----------------------------|

| | | | |
|-----------|--------------------|-----------------------------|---------------|
| Reviewer: | _____ Signature | _____ Print Title & Name | _____ Date |
|-----------|--------------------|-----------------------------|---------------|